

1982 WL 189496 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 3, 1982

*1 Honorable Fox Cahaly

Judge

Family Court

1075 Main Street

Anderson South Carolina 29621

Dear Judge Cahaly:

You have requested that this office advise you as to a school attendance matter. According to the information which you have provided me, a student was suspended from school pending proceedings in your court. In those proceedings, you ordered that the child live with his grandfather and attend school in the district in which his grandfather resides. The grandfather's district has refused to allow the child to attend. You want to know whether that school district may be required to accept him.

[Section 59-63-30 of the Code of Laws of South Carolina \(1976\)](#) provides that '[c]hildren . . . shall be entitled to attend the public schools of any school district, without charge, only if . . . (a) such child resides with its parent or legal guardians . . . [Emphasis added]'. If, under your order or a future order, the child's grandfather is made his legal guardian,¹ the child will come within the scope of this statute. Because of the mandatory nature of the language underlined above and the absence of any suggestion in the statute that school districts have discretion as to the attendance of children coming within its terms, the school district must accept the child if his grandfather is made his legal guardian. See Sutherland Statutory Constructions, Vol. 2A, § 57.03 (4th Ed.); but see 1977 Ops. Atty. Gen. No. 77-113, p 99. The requirement of paragraph (e) of [§ 59-63-30](#) that children not be guilty of an infraction of the rules of conduct of 'such school district (emphasis added)' clearly refers to the rules of the district in which he is seeking enrollment. Thus, this paragraph is inapplicable here as the student was suspended from a different school district.

On the facts presented here, no other code provision appears to exclude the child from the operation of [§ 59-63-30](#). The provisions for the transfer of students set forth in § 59-63-480 through § 59-63-510 indicate that they apply only to children who transfer from one district to another while maintaining residence in the original district. See also Act 822, Acts and Joint Resolutions of South Carolina, 1948. Section 59-65-80, which exempts suspended and expelled students from the compulsory school attendance laws also is not operative here. In its references to disciplinary action by 'the board of trustees of the district (emphasis added)', the statute seems to be intended only to prevent the absurdity of compelling the attendance of a student in the same school district in which he has been lawfully suspended or expelled. Moreover, from the description you have given me of the school district's suspension and your order, the suspension expired with your decision. Although no opinion is expressed herein as to whether the grandfather's school district could bar the student if the suspension were still effective, the above authority seems to indicate that it could not do so. But see 1977 Ops. Atty. Gen. No. 77-113, p. 99.

*2 If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.

Assistant Attorney General

Footnotes

1 A discussion of guardianship under this statute is contained in the enclosed opinion of this office (10/12/79, by J. Emory Smith, Jr.)
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